

10/634,408

Patent
57354-08USA**REMARKS**

In the Office Action of August 9, 2005, the Examiner required election of a single disclosed species from the following two (2) groups of claimed invention comprising patentably distinct species: Group (a), claims 2-3, 16-17, and 19-20, listing six distinct proteins which may be encoded and Group (b), claims 6-7, listing four distinct vectors.

Applicants traverse this requirement. Reconsideration and withdrawal thereof are earnestly requested.

The Examiner has placed election of species requirement between IL-1Ra, IL-4, IL-6, IL-10, IL-16, and TGF- β 1 disclosed in claims 2-3, 16-17, and 19-20. Applicants note that the disclosed proteins are anti-inflammatory or immunosuppressant proteins. These proteins also refer to a cytokine which includes families of the protein, which are related by sequence similarity or function. Therefore, these species are closely related and the election of species requirement is not proper. Although Applicants disagree with the Examiner, in order to be responsive to the outstanding election of species requirement, Applicants provisionally elect to prosecute "IL-10".

The Examiner has also placed election of species requirement between adenovirus, adeno-associated virus, retrovirus, and plasmid disclosed in claims 6-7. Applicants note that the disclosed virus and plasmid are vectors. These vectors are used to deliver the gene of interest to a host. In other words, a DNA sequence of interest encoding a functional immunosuppressive and/or anti-inflammatory protein fragment is subcloned into the respective vector. Any kind of vector may be used as long as the gene of interest is delivered into the host and functionally expressed. Therefore, the election of species requirement is not proper. Although Applicants

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disagree with the Examiner, in order to be responsive to the outstanding election of species requirement, Applicants provisionally elect to prosecute "adenovirus".

It is believed that all of the pending claims 1-20 are readable on the provisionally elected species "IL-10" and "adenovirus". Accordingly, early examination on the merits is respectfully requested.

The Commissioner is authorized to charge JHK Law's Deposit Account No. 502486 for any fees required under 37 CFR §§ 1.16 and 1.17 and to credit any overpayment to said Deposit Account No. 502486.

Respectfully submitted,

JHK Law

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